IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7024 of 2001

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE D.A.MEHTA

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UNION OF INDIA
Versus
DH JHALA, SENIOR CLERK,

Appearance:
1. Special Civil Application No. 7024 of 2001
MS PAURAMI B SHETH for Petitioners No. 1-3
RULE SERVED BY DS for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE D.A.MEHTA

Date of decision: 07/02/2002

ORAL JUDGEMENT

(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

#. The Petition has been filed under Article 227 of the Constitution of India by the Union of India representing the Postal Department. The challenge made is to the order dated 22-02-1993 passed by the Central Administrative Tribunal, Ahmedabad Bench and the subsequent order dated 30-11-2000 rejecting the application for review of the earlier order of the Tribunal.

#. Under the orders impugned, the departmental proceedings pending against the respondent-employee have

been stayed until decision of Criminal Case No. 579 of 1984 pending against him in the Court of Judicial Magistrate (First Class) Gondal.

#. Learned counsel appearing for the Union of India relies on the decision of the Supreme Court in the case of Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. reported in AIR 1999 SC 1416. Attention of the Court is drawn to the following conclusion in subparagraph 5 of paragraph 22:

> "22. The conclusions which are deducible from various decisions of this Court referred to above are:
> (i) to (iv) xx xx xx
> (v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest."

#. Learned counsel then pointed out the relevant facts. The respondent employee as Sub Post Master was alleged to have committed various financial irregularities in the year 1981. After conducting preliminary investigation, a charge sheet was issued to him on 15-03-1982. However, departmental proceedings were kept in abeyance as a criminal complaint was filed by the Department against the employee on 14-07-1982. After investigation, the police registered a Criminal Case No. 579 of 1982 for offences under Section 409, 465 and 468 of the IPC which is pending in the Court of Judicial Magistrate (First Class) Gondal and now transferred to Judicial Magistrate (First Class) Rajkot. The respondent employee approached the Central Administrative Tribunal for stay of the departmental proceedings. By order made on 22-02-1993, the Tribunal stayed the departmental proceedings. Since the Criminal Case is pending for an unduly long period of time, the Department made an application for recalling the order of stay of the departmental proceedings. The said application was rejected by the Tribunal by the impugned order dated 30-11-2000.

#. On this Petition, notice was issued to the respondent employee. Despite service, he has chosen not to appear and contest this case. The observations of the Supreme

Court in the case of Capt. M. Paul Anthony (supra) support the submissions made on behalf of the Department that as the proceedings in the Criminal Case have been unduly delayed, the departmental proceedings cannot be stayed for an indefinite period.

#. Consequently, we allow this Petition and set aside the impugned orders of the Tribunal dated 22-02-1993 and 30-11-2000. As a result of setting aside of the aforesaid orders, the petitioner-Department may now proceed with the departmental proceedings.

Rule is made absolute. There shall be no order as to costs.

(D.M. DHARMADHIKARI,C.J.)

(D.A. MEHTA, J.)

[sndevu]